

SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

SENATE, No. 2003

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 12, 2015

The Senate Law and Public Safety Committee reports without recommendation and with committee amendments Senate Bill No. 2003.

As amended and reported by the committee, Senate Bill No. 2003 makes various changes to this State's juvenile justice system. Specifically, the amended bill revamps the State's law governing waiver; expands family court jurisdiction under certain circumstances; requires due process before a juvenile can be transferred to an adult correctional facility; and restricts the use of room restriction to discipline incarcerated juveniles.

Under this State's current juvenile waiver statute, a juvenile's case may be transferred to adult criminal court under certain circumstances. Whether a juvenile's case is waived depends on the age of the juvenile, if probable cause is established that the juvenile committed the offense charged. In some instances, waiver depends upon whether it can be shown that the interests of the public require waiver and whether the juvenile can establish that the probability of rehabilitation through the use of court services by the time he or she is 19 years old outweighs the reasons for waiver.

Currently, a prosecutor has 30 days from the time of the complaint to file a waiver motion unless good cause is shown to extend this time period. If a prosecutor motions to waive the case of a juvenile who has reached the age of 16 or older and establishes the requisite probable cause that the juvenile committed a serious offense as enumerated in the statute, often referred to as a "chart 1" offense, the juvenile will automatically be waived to adult criminal court. This is referred to as "prosecutorial discretionary waiver." The chart 1 offenses include such offenses as criminal homicide (excluding death by auto), strict liability for drug-induced deaths, first degree robbery, aggravated sexual assault and sexual assault, possession of a firearm with the purpose to use it unlawfully against another person, leader of a narcotics trafficking network, maintaining and operating a controlled dangerous substance production facility, weapons possession while committing certain other controlled dangerous substance offenses, and first or second degree computer criminal activity.

Juveniles who are 14 or 15 years old and juveniles 16 years of age or older who are charged with less serious offenses, often referred to as “chart 2 offenses,” will be waived to adult criminal court if the State establishes that the nature of the charge against the juvenile or the juvenile’s prior record is sufficiently serious that waiver is in the public interest and if the juvenile fails to establish during an “amenability hearing” that the probability of rehabilitation outweighs the reasons for waiver. This is referred to as “judicial discretionary waiver.”

The amended bill repeals the current juvenile waiver statute and replaces it with a streamlined process for determining whether a juvenile case should be transferred to an adult criminal court. Under the amended bill, only juveniles who are 15 years of age and older and who are charged with certain chart 1 offenses would be eligible for waiver. The time allotted to the prosecutor to file a waiver motion is increased from 30 to 60 days after receiving the complaint.

After establishing probable cause that a juvenile 15 years of age or older committed one of the enumerated chart 1 offenses, the amended bill requires the prosecution to prove, by clear and convincing evidence, that the nature and circumstances of the charge or the juvenile's prior record are sufficiently serious that the interests of the public require waiver. In making the determination of whether the interests of the public require waiver, the court is required to consider: 1) the nature and circumstances of the offense charged; 2) whether the offense was against the person or property, allocating more weight for crimes against the person; 3) the degree of the juvenile’s culpability; 4) the age of the juvenile; 5) any diagnoses concerning mental capacity or cognitive development of the juvenile, or any classification that the juvenile is eligible for special education; 6) the maturity of the juvenile; 7) the degree of criminal sophistication exhibited by the juvenile; 8) the nature and extent of any prior history of delinquency of the juvenile; 9) any current or prior involvement of the juvenile with child welfare agencies; 10) any evidence of mental health concerns, substance abuse, or emotional instability of the juvenile; and 11) the moral development of the juvenile. The often lengthy and expensive amenability hearings held pursuant to the current juvenile waiver statute would be eliminated.

The amended bill’s provisions concerning juvenile waiver also provide for a juvenile whose case was waived to serve his or her sentence in a juvenile facility rather than an adult facility. Specifically, the juvenile’s case is to proceed in the adult criminal court as if the case originated there, including through sentencing, but there is a presumption in the amended bill that the juvenile will serve a custodial sentence in a juvenile facility until the juvenile reaches the age of 21. Under the bill, a juvenile under 21 years of age may be required to serve the sentence in a State correctional facility if good cause is shown. Also, a juvenile may continue to serve a sentence in a

juvenile facility after reaching the age of 21 if it is deemed to be in the juvenile's best interest.

Also under the amended bill, certain juvenile cases waived to an adult criminal court will be remanded to the juvenile court for sentencing, which is referred to as disposition under the juvenile code. Specifically, if a juvenile was not convicted of the offense on which the waiver was based, but was convicted of a lesser offense, the case will be remanded to the juvenile court and the juvenile court judge would impose a disposition, which may include incarceration. The juvenile therefore would be subject to the penalties under the juvenile code, rather than those under adult criminal code.

In addition to revamping the current juvenile waiver statute, the amended bill establishes a presumption that a juvenile whose case has been waived is to be detained in a juvenile facility pending resolution of the case and pending sentencing.

The amended bill also changes the current law governing extended sentences for juveniles. Currently, the juvenile code provides for a custodial sentence of one year for a crime which, if committed by an adult, constitutes a fourth degree crime; two years for a third degree crime; three years for a second degree crime; four years for a first degree crime other than murder; and either 10 or 20 years for murder depending on the circumstances. A prosecutor can apply for an extended term of incarceration if the juvenile was adjudicated delinquent on two separate occasions for a first or second degree crime and was previously incarcerated. Extended terms consist of five years for murder, two years for a crime of the first or second degree, and one year for a crime of the third degree. Under the amended bill, the extended sentence remains five years for murder, but increases the term from two to three years for all other first degree crimes. The amended bill also removes the requirement that the juvenile had to be previously incarcerated to be eligible for an extended sentence.

The amended bill further provides that if, at any point in the proceedings subsequent to the decision granting waiver, information is obtained that has any bearing on the factors considered by the court in determining whether the interest of the public required waiver, the juvenile is authorized to petition the court for remand to the juvenile court if the juvenile can prove by clear and convincing evidence that the interest of the public and the best interests of the juvenile requires access to programs or procedures uniquely available to that court, or if the interest of the public is no longer served by waiver to the adult criminal court.

The amended bill also makes changes to the current law governing the transfer of juveniles from a juvenile facility to a State correctional facility. Current law requires the Juvenile Justice Commission (JJC) and the Department of Corrections to formulate a plan setting forth procedures for transferring juveniles from a juvenile facility to an adult correctional facility upon reaching the age of 18 if the juvenile poses a

threat to the public safety or the safety of other juvenile offenders, or impedes JJC operations. The amended bill requires that plan to include specific provisions to ensure that: (1) the juvenile is notified, in writing, of the proposed transfer and the factual basis supporting the transfer; (2) the juvenile is provided with the opportunity to be heard and to present opposition; (3) the juvenile be represented by counsel; (4) the decision to proceed with the transfer is made by an impartial person; and (5) written findings of the facts supporting the decision to proceed with the transfer accompany the decision.

The amended bill also expands the jurisdiction of the family court over juvenile cases by authorizing the juvenile to petition the court for modification of the disposition or to compel the Juvenile Justice Commission to comply with the terms and conditions of that disposition.

Finally, the amended bill places restrictions on the use of solitary confinement, or what is referred to in current JJC regulations as “room restriction,” in State juvenile correctional facilities and juvenile detention centers. The amended bill prohibits a juvenile from being subject to room restriction, unless the juvenile poses an immediate and substantial risk of harm to others or to the security of the facility, and all other less-restrictive options have been exhausted.

The bill specifically prohibits a juvenile from being subject to room restriction for more than eight consecutive waking hours without being released for at least two hours for recreation and exercise. Under the amended bill, 14 and 15 year old juveniles are prohibited from being subject to room restriction for more than two consecutive days; 16 and 17 year olds are prohibited from being subject to room restriction for more than three consecutive days; and juveniles 18 years of age or older are prohibited from being subject to room restriction for more than five consecutive days. Juveniles, regardless of their age, may not be subject to room restriction under the amended bill for more than 10 total days in a calendar month. Juveniles are to continue to receive health, mental health, and educational services when subject to room restriction.

The amended bill requires that the use of room restriction be documented by the facility or center. The information is to include the dates and duration of each occurrence, the reason for the placement, race, age, and gender of the juvenile, and if any health or mental health clinical evaluations were performed, that the results were considered in the decision to subject the juvenile to room restriction. The aggregate data is to be made available to the public under the State’s Open Public Records Act. The JJC also is required to publish the aggregate data on its website.

COMMITTEE AMENDMENTS:

The committee made the following amendments to the bill:

1) replace the current juvenile waiver statute to provide for a juvenile to be waived to adult criminal court if the following three conditions are met:

a) the juvenile is 15 years old; and

b) there is probable cause that the juvenile committed one of the serious offenses enumerated in the new section; those offenses closely mirror the current “chart 1” offenses for which 16 and 17 years olds are waived under prosecutorial discretion; and

c) the prosecution proves by clear and convincing evidence that the nature and circumstances of the charge or the juvenile’s record are sufficiently serious that the interests of the public require waiver; in making this determination the court is to consider various factors set forth in the new statute, such as the nature and circumstances of the charges, whether the offense was against a person or property, the age and maturity of the juvenile; prior delinquent history; and the juvenile’s mental health;

2) provide that a juvenile who is waived to adult court serves a custodial sentence imposed in a juvenile facility until the juvenile is 21; there’s an exception providing that a juvenile under 21 can be required to serve the sentence in an adult facility if good cause is shown; there’s also an exception that a juvenile 21 or older can continue serving the sentence in a juvenile facility if it is deemed to be in the best interests of the child;

3) provide that the case of a juvenile who is convicted of a non-waivable offense is remanded to family court for a disposition;

4) include a reverse waiver provision which allows for the juvenile’s case to be remanded to the family court based on information received after the waiver decision;

5) provide that juveniles whose cases are waived and are detained pending resolution of the case and while awaiting sentencing are to be detained in a juvenile facility;

6) increases extended terms that may be imposed under the juvenile code for first degree crimes and removes the requirement that a juvenile be previously committed to an adult or juvenile facility;

7) deletes all of section 2 of the bill which would have given the family court the ability to order the JJC to provide certain rehabilitative, treatment, and educational services to incarcerated juveniles;

8) change the references to “solitary confinement” in section 5 of the bill to “room restriction” as that is the term used in JJC regulations.